



New Mexico Legislative Council Service

INFORMATION BULLETIN

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FIREARM SALES TO THE MENTALLY ILL

BACKGROUND

Congress enacted legislation in 1968 banning the sale of firearms to individuals declared "mentally defective" in a court of law or committed to a mental institution. The Brady Handgun Violence Prevention Act of 1993 amended the law to require state law enforcement officials to report individuals considered to be "mentally defective" to a national database that gun dealers would check prior to completing a firearm sale. The United States Supreme Court declared that provision unconstitutional in 1997. Since then, states have been responsible for enforcing the ban on firearm sales to the mentally ill. State action falls into three categories:

- 1) voluntary contribution of mental health records to a national database;
- 2) development and administration of a state database for performing mental health background checks; and
- 3) no action at all.

New Mexico, and 27 other states, fall into the last category. The recent Virginia Tech tragedy has brought national focus to the issue. This information bulletin addresses the issues facing New Mexico's policymakers.

THE ISSUE IN NEW MEXICO

The issue in New Mexico is not that gun dealers do not perform the required federal background checks of potential customers. The issue is that New Mexico does not contribute state mental health records to the federal database or compile them for state reference. Virginia has, on the other hand, contributed more records than any state (80,000 records).

If a "mentally defective" resident of Virginia attempted to purchase a firearm in New Mexico, that person would likely be prohibited from doing so. But, if a "mentally defective" resident of New Mexico tried to purchase a firearm in New Mexico or any other state, a background check would quite likely "green light" that person for purchase.

MENTAL HEALTH QUICK FACTS

- 90% of potentially disqualifying mental health records are not reported to the national database
- 22 states report to the federal database, nine of which have contributed 10 or fewer records and five of which have contributed only one
- The number of mental health records reported to the National Instant Criminal Background Check System (NICS) increased from 90,000 to 234,000 between 2002 and 2005
- The estimated figure of records that *should be contained* in the database is 2.6 million
- A 2002 estimate of persons with serious mental illness in New Mexico was 73,146
- One out of every 30,000 prospective gun buyers checked on the database was rejected by reason of mental health disqualification
- Since background checks became mandatory in 1998, only 2,608 denials were based on a mental health record

WHAT OTHER STATES ARE DOING AND NOT DOING

The United States Department of Justice reports that 28 states do not contribute mental health information to the NICS. Some states

claim that privacy laws or a lack of technical capacity prevent the sharing of records with the federal database. Pennsylvania privacy laws prevent that state from sharing mental health records with the federal database, but permit the use of the information by state law enforcement officials for state background checks. Similarly, in New Mexico, state law prohibits the disclosure of medical records, except in specific, limited circumstances (Section 43-1-19 NMSA 1978). If an amendment added an exception allowing federal reporting, New Mexico could become compliant with the federal ban. West Virginia cites technical difficulties as to why it has not contributed mental health information to the federal database; counties carry out mental health adjudications but do not report to a coordinating entity capable of compiling the records.

Twenty-two states, including several western states, voluntarily share mental health records with the NICS. But the recent tragedy at Virginia Tech demonstrated that states that contribute to the database still experience problems.

The shooter in the Virginia Tech tragedy was able to purchase firearms following a court's declaration that he was "mentally defective" because Virginia only reports individuals who are *committed* to mental institutions. In the case of the shooter, he had only been sentenced to counseling. Counseling is a form of outpatient treatment and is, therefore, not reported.

More recently, an armed man suffering from delusions was shot and killed by police outside the governor's office at the Colorado State Capitol. The man purchased his gun legally because he had not been adjudicated as mentally ill and health professionals are not obligated to report their patients.

CHALLENGES IN NEW MEXICO

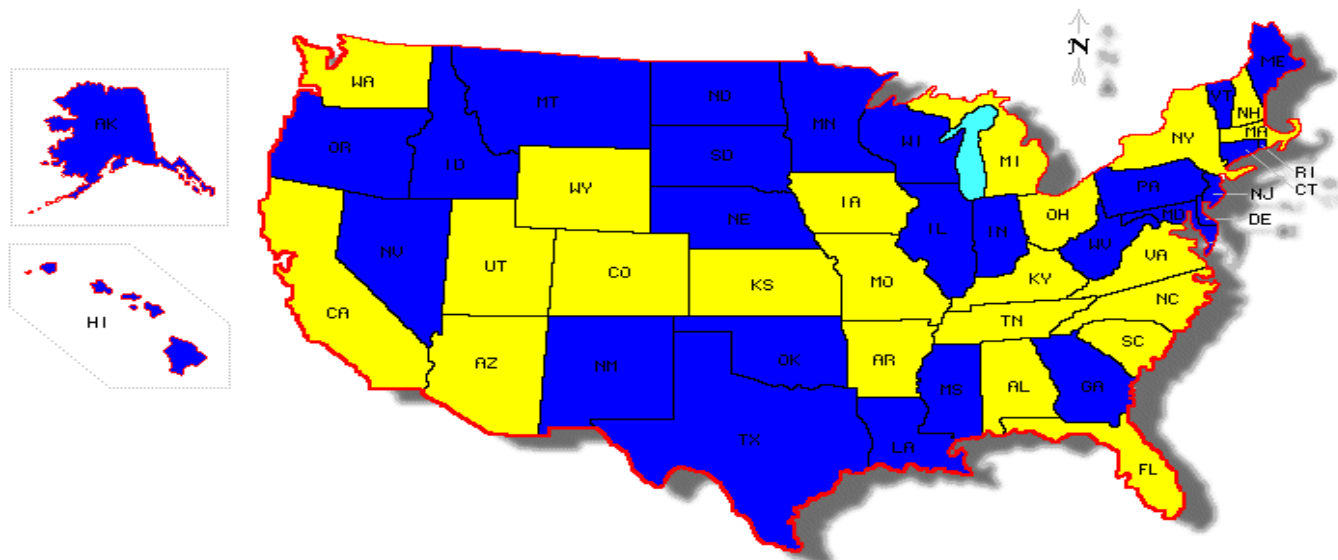
If New Mexico were to decide to join the other 22 states that share mental health records with the federal database, the state would have to determine what constitutes "mentally defective". Several states define the class of prohibited persons beyond the broad federal disqualification. Texas developed a model based on psychiatric diagnosis that prohibits the sale of firearms to persons with particular disorders. Colorado reports all persons deemed incapacitated by a court, persons committed by a court for alcohol or drug abuse and persons sentenced to involuntary mental health treatment.

In the event New Mexico begins to share mental health records, the state would also have to consider the method by which mental health records are compiled and reported. California, for example, requires that all persons who have been admitted to a psychiatric hospital and designated a danger to themselves or others must be reported to local law enforcement by the attending mental health care professional. Colorado requires that every judicial district report the results of adjudications that classify individuals as one of the classes prohibited from gun ownership.

Pennsylvania is a state that administers its own mental health database in enforcing federal law. Courts alert state police of adjudications resulting in classifications of mental defectiveness or other disqualifying criteria. The state police division enters and maintains the records reported to it. Gun dealers must run mental health checks through the state police before selling a firearm to any customer.

States that Report Mental Health Information

- - Share Records
- - No sharing



Source: DOJ compiled by LCS

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REMOVAL PROVISIONS AND FUTURE FIREARM PURCHASE

It is possible to have a disqualifying mental health record removed from the federal database. The NICS allows for an appeal process in which a potential firearm purchaser can challenge a disqualification. States can add, modify or cancel records contributed to the database either by direct electronic interface or by a data transfer of record.

EXISTING GUN REGULATIONS IN NEW MEXICO

Currently there are very few state regulations relating to the sale of firearms in New Mexico. Felons are prohibited from firearm ownership under federal law, but New Mexico allows for the restoration of ownership rights after 10 years (Section 30-7-16 NMSA 1978). It is also illegal in New Mexico for a

person 19 years old or younger to possess handguns (Section 30-7-22 NMSA 1978). The state has not established a prohibited class of firearms nor does the state require background checks on firearm purchasers beyond federal law. There is no required waiting period for firearm transfers under New Mexico or federal law. The New Mexico Department of Public Safety is the "entering agency" for criminal records on the NICS database.

RESPONSE TO TRAGEDY

There is a current push in Congress and the executive branch to encourage states to contribute mental health information to the federal database. On June 13, the United States House of Representatives passed a bill, with the support of the National Rifle Association, that would provide funding for the states to do so, but also would provide a penalty for those

states that do not participate. Penalties would be assessed as federal withholding of appropriations under the Omnibus Crime Control and Safe Streets Act.

Several states have already closed loopholes and bolstered contributions to the federal database. Following the tragedy at Virginia Tech, Virginia Governor Tim Kaine issued an executive order requiring the state to report individuals ordered to undergo outpatient treatment and persons committed by a court. Governor John Baldacci of Maine issued an executive order requiring its Department of Public Safety to share information with the NICS of individuals deemed by the courts to be mentally incompetent. Illinois has taken similar action.

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This information bulletin does not represent a policy statement of the Legislative Council Service or its staff. This Information Bulletin was written by Zach Taylor. For more information, contact the Legislative Council Service at (505) 986-4600.